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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,580	10/06/2003	Glenn H. MacKal	380804.00116	6851

7590 01/17/2006

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/681,580	Applicant(s) MACKAL ET AL.	
	Examiner Eric Keasel	Art Unit 3754	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 14 November 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.



Eric Keasel
Primary Examiner
Art Unit: 3754

Continuation of 10. Other (including any explanation in support of the above items): Claims 4, 7, 8, and 10-17 were withdrawn from consideration with traverse. A complete reply to the final rejection should have included the cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. However, no such action was taken. Appellant must either cancel these claims or petition the restriction requirement. Appropriate action must be taken or the appeal will be dismissed. Appellant has again failed to refer to the drawings and reference characters in the summary of the claimed subject matter. The argument section appears to contain separate arguments for separate claims; however, appellant has again failed to place these arguments under separate headings.

The appeal brief filed on November 14, 2005 is not fully responsive to the prior Notification of Non-Compliant Appeal Brief because appellant has not complied with the requirements set forth in 37 CFR 41.37 and has not cancelled the nonelected claims or taken other appropriate action. Since the period for reply set forth in the prior Notification of Non-Compliant Appeal Brief has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in the prior Notification of Non-Compliant Appeal Brief. A fully responsive reply must be timely filed to avoid abandonment of this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).